Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

RHYTHMS NETCONNECTIONS INC.
REPLY COMMENTS IN SUPPORT OF
ALTS LOOP PETITION

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SUMMARY

The comments on the ALTS Petition for Declaratory Ruling: Broadband Loop Provisioning ("ALTS Petition") demonstrate that the Federal Communications Commission ("Commission") should adopt national loop provisioning standards. Rhythms and other CLEC commenters broadly support the ALTS proposals for federal requirements setting intervals for loop provisioning, implementing a deadline for CLEC OSS interfaces for loop information, reiterating subloop unbundling obligations to ensure full and fair implementation, restating the requirement of TELRIC-based nonrecurring charges for loop de-conditioning, and establishing self-executing penalties for enforcing loop standards. Commenters also recognize the need for the Commission to ensure that the ILECs loop provisioning supports facilities-based competition, especially as ILEC network architectures evolve.

Without real substantive refute from the ILECs, the CLEC commenters detailed numerous examples of anticompetitive loop provisioning that have delayed their ability to provide broadband services to eager consumers. In contrast, the ILECs fail to successfully argue that the Commission should not issue a declaratory ruling that resolves the open issues on loop provisioning. To the contrary, it is clear that the substantial controversy and uncertainty surrounding loop provisioning for broadband services warrant expeditious Commission action in accordance with the ALTS Petition.

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Rhythms NetConnections Inc., along with Rhythms Links Inc. (collectively "Rhythms"), hereby submits its response to opposition of the Petition for Declaratory Ruling: Broadband Loop Provisioning[1] filed by the Association for Local Telecommunications Services ("ALTS") with the Federal Communications Commission ("Commission").

INTRODUCTION

On June 23, 2000, Rhythms, along with numerous other carriers, submitted comments to the Commission regarding the ALTS Petition for Declaratory Ruling: Broadband Loop

[1] ALTS Petition for Declaratory Ruling: Broadband Loop Provisioning, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48 (filed May 17, 2000)("ALTS Petition").

Provisioning. ALTS petitioned the Commission for a declaratory ruling that would clarify, interpret and modify the rules governing nondiscriminatory loop provisioning. The ALTS Petition proposed specific requirements that, if implemented on a uniform, nationwide basis, would foster facilities-based competition in the broadband market as obligated by the unbundling requirements of the Telecommunications Act of 1996 ("1996 Act") and this Commission's orders.[2]

Like Rhythms, other competitive carriers' comments demonstrate that there is strong industry support for Commission adoption of national loop provisioning standards to foster uniform facilities-based competition.[3] Based on their post-1996 experiences in the broadband marketplace, competitive local exchange carriers ("CLECs") therefore strongly support the minimum requirements proffered by ALTS. Individual CLECs demonstrate through numerous examples the obstacles to obtaining access to unbundled loops from the incumbent local exchange carriers ("ILECs") in a manner that allows them to provide competitive broadband services to consumers. Even now, ILECs refuse to acknowledge, much less implement, the general unbundling requirements previously established by the Commission. This blatant ILEC disregard of their unbundled network elements ("UNE") obligations, coupled with the detrimental impact that such behavior has on the development of facilities-based competition, evidences the need for the Commission to establish minimum requirements compelling the nondiscriminatory provisioning of unbundled loops.

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[2] *Id.* at 32-33.

[3] Rhythms Comments at 2; @Link Comments at 2; Allegiance Comments at 2; AT&T Comments at 2-3; Bluestar Comments at 1; Comptel Comments at 2; Covad Comments at 3; CTSI Comments at 2; DSLnet Comments at 2; Focal Comments at 1; Jato Comments at 1-2; KMC Telecom Comments at 4; McLeod Comments at 1; CoreComm Comments at 1-2; Network Access Solutions Comments at 1-2; NewPath Comments at 2; Prism Comments at 1-2; RCN Comments at 1; Teligent Comments at 1-2; Time Warner Comments at 2; WorldCom Comments at 1.

DISCUSSION

I. TO FACILITATE THE DEVELOPMENT OF FACILITIES-BASED COMPETITION CLECs UNIFORMLY SUPPORT THE NATIONAL STANDARDS PROPOSED IN THE ALTS LOOP PETITION

CLEC commenters echoed the Rhythms' conclusion that minimum federal requirements would promote competition—and the attendant consumer benefits— by counteracting the ILECs' incentive to discriminate against CLECs.[4] As described below, there is broad CLEC support for national loop provisioning intervals, a deadline for electronic access to the loop information in the operations support systems, enforcement of subloop unbundling obligations and reiteration of the TELRIC requirement for nonrecurring charges. To ensure compliance, CLECs also support self-enforcing penalties for failure to comply with this Commission's mandates. In contrast, the ILEC objections demonstrate their anticompetitive posture, further supporting the Commission action requested by ALTS.

A. There Is A Clear Need For National Loop Provisioning Intervals.

CLECs broadly support establishment of federal maximum loop provisioning intervals.[5] It is simple—the longer competitors wait to obtain unbundled loops from the ILECs the greater the delay consumers experience in receiving competitive broadband services.[6] As Covad aptly surmises, "[n]o customer is going to await service for so long, especially when another

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[4] *Id.*

[5] Rhythms Comments at 5-7. @Link Comments at 14-15; Allegiance Comments at 14; Bluestar Comments at 4-5; Comptel Comments at 3-5; Covad Comments at 5-16; CTSI Comments at 12; DSLnet Comments at 15-16; KMC Telecom Comments at 18-19; CoreComm Comments at 20-21; Network Access Solutions Comments at 7-9; Prism Comments at 7-9; RCN Comments at 11; WorldCom Comments at 9-10.

[6] Rhythms Comments at 5-7; AT&T Comments at 2, 5; Comptel Comments at 4-5; Covad Comments at 2, 14; DSLnet Comments at 15; Jato Comments at 4; KMC Telecom Comments at 18; Prism Comments at 7; RCN Comments at 11; WorldCom Comments at 2.

option—retail broadband service from the very same incumbent LEC that denied [CLECs] a timely wholesale loop—is usually available in a matter of days."[7]

Rather than directly address the issues raised by ALTS, US West turns again to the tired argument that there is no such thing as parity, in US West's view, "since there is no retail service analogue to the sale of unbundled loops."[8] Thus without Commission action, US West will simply not acknowledge the obligation to provision CLECs loops in at least the same interval as loops are provisioned for its retail service offerings. Not only does US West's position evidence the intransigence faced by CLECs seeking ILEC cooperation in loop provisioning, but it actually *supports* the need for federal standards in the absence of a retail analogue. Moreover, as Covad observes, "[t]his purported parity measure actually measures the time at which a competitive LEC can *begin* to provide service to its customer and compares it to the time that an incumbent LEC has *completed* providing service to its retail customer."[9] For these reasons, the typical ILEC argument for parity misses the point of the statutory and regulatory obligations.

Other ILECs make equally unavailing arguments against nationally uniform intervals for provisioning loops. In fact, SBC, Bell Atlantic, BellSouth and GTE resort to threats. GTE, for example, claims that setting intervals for provisioning unbundled loops "would simply assure that ILECs would be unable to comply."[10] GTE thus seems to contend that—even without knowing what this Commission's interval would be—it has no intention of meeting it. Other ILECs foreshadow service degradation or other diminution of quality.[11] Tellingly, these ILEC

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7 Covad Comments at 2.

8 US West Comments at 4.

9 Covad Comments at 14.

10 GTE Comments at 15.

11 SBC Comments at 21; Bell Atlantic Comments at 10; BellSouth Comments at 5; GTE Comments at 15.

oppositions do not stem from any particular interval proposal, but rather react to the possibility of one. As the ILECs on an individual basis may already be obligated to provision loops within the federally-mandated interval, this alone is a powerful testimonial of the substantial benefit the ILECs derive from scattering decision-making across the country and isolating CLECs during negotiations.[12] This is also strong evidence of the need for the Commission to set a maximum 3-day interval for provisioning of unbundled loops to encourage prompt service to wholesale customers in order to more aptly deliver broadband services to consumers.[13]

B. The Commission Must Act to Ensure Competitively Appropriate OSS For Loop Provisioning.

Rhythms is joined by many CLECs urging the Commission to impose a date certain by which ILECs must provide functional, electronic Operations Support System ("OSS") interfaces to guarantee CLECs access to loop information on a nondiscriminatory basis.[14] The absence of fully-operational, electronic OSS interfaces that allow CLECs to obtain all loop information to which the ILEC has access uniformly hampers the CLECs from effectively competing for broadband customers.[15] Although the Commission already set a date certain of January 1, 1997,[16] ILECs to date have generally failed to provide CLECs full, electronic access to *all* interfaces.[17] WorldCom specifically noted that "[g]iven the lack of competitive pressure from

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[12] *See* Rhythms Comments at 4-5.

[13] *See* Rhythms Comments at 6.

[14] Allegiance Comments at 13; Comptel Comments at 5-6; Network Access Solutions Comments at 5-6; WorldCom Comments at 14.

[15] Rhythms Comments at 7-10; Allegiance Comments at 13; Comptel Comments at 5-6; Covad Comments at 18-21; Network Access Solutions Comments at 5-6; WorldCom Comments at 14.

[16] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15,499, ¶ 252 (1996)("*Local Competition Order*").

[17] Rhythms Comments at 9-10; Comptel Comments at 6; Covad Comments at 19-20; Network Access Solutions Comments at 4; WorldCom Comments at 14; *see also* ALTS Loop Petition at 23.

entrants that did not have to depend on RBOC OSS systems, it has been sound RBOC business strategy to remain intransigent in providing CLECs access to its OSS, and thereby protect their local market from competition, even if that meant a delay in entering the long distance market."[18] This issue is clearly ripe for further Commission action, including enforcement measures or penalties.

The anticompetitive nature of ILEC refusals to comply with their regulatory obligation to implement electronic OSS interfaces is underscored by the failure to present any meaningful basis for opposing the ALTS proposal. Indeed, the sole defense proffered by the ILECs for this failure to timely implement electronic OSS is the well-refuted assertion that they do not provide loop data to themselves (or their subsidiaries) in order to pre-qualify DSL loops.[19] The Commission has already rejected this argument, stating that "at a minimum, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or internal records[,]"[20] regardless of whether the ILEC uses such information for its own services.[21]

C. *The Commission Must Reiterate the Requirement To Unbundle the Local Loop in its Entirety, As Well As All Subloop Elements of the Loop.*

Commenters agree with Rhythms that the Commission must act expeditiously to ensure uniform and full implementation of its subloop unbundling requirements.[22] As Rhythms explained in its comments, the ILECs' obligation to unbundle the subloop includes unbundling

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[18] WorldCom Comments at 14.

[19] SBC Comments at 17; Bell Atlantic at 13; GTE Comments at 14.

[20] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238, ¶ 427-28 (rel. Nov. 5, 1999)("*UNE Remand Order*").

[21] *Id.* ¶ 430.

[22] Rhythms Comments at 14-17; Allegiance Comments at 8; KMC Telecom Comments at 11-13; CoreComm Comments at 40-42; NewPath Comments at 3; WorldCom Comments at 10-12.

all subloop portions of the local loop, which comprises all transmission facilities between the customer premises and the central office.[23] Nevertheless, in their comments US West and SBC explicitly ignore this Commission's rule, unilaterally limiting their subloop unbundling obligation to only allow CLEC access to the copper portion of the loops at the feeder distribution interface and the customer premises.[24] SBC, in fact, redefines the local loop as data transport service that is not subject to their Section 251 unbundling obligations.[25] As Allegiance explained in its comments:

> SBC proposes to offer competitive LECs only a prepackaged subloop service rather than the actual access to subloops that section 251(c)(3) requires. To be sure, this prepackages DSL service involves the use of SBC-owned subloops, but it is nevertheless only a *service*—suitable for resale but not a substitute for actual access to the subloop *element* itself.[26]

The Commission, therefore, could legitimately conclude that ILECs are uncertain of their subloop unbundling obligations, an uncertainty that is multiplied for CLECs that seek access to the unbundled subloop in accordance with the Commission's rules for the provision of broadband services to the American consumers.

D. The Commission Must Reiterate the Requirement of TELRIC Based Pricing for Nonrecurring Charges, Including De-Conditioning Charges.

Numerous CLECs also agree with Rhythms that the Commission must explicitly restate that all nonrecurring charges for unbundled loops must adhere to TELRIC principles, including

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[23] Rhythms Comments at 14-15; KMC Telecom Comments at 11-12; CoreComm Comments at 41.

[24] US West Comments at 9; SBC Comments at 12. Bell Atlantic also references its unbundled subloop tariffs in Massachusetts and New York. As Rhythms has previously explained, Bell Atlantic also operates under the misconception that it must only offer the copper portion of the local loop on an unbundled basis. Rhythms Comments at 15-16.

[25] SBC Comments at 12 ("CLECs can take advantage of a new BroadBand Service to gain data transport from the customer premises to the central office[.]").

[26] Allegiance Comments at 9.

those costs associated with the de-conditioning of loops.[27] For example, Jato recognizes carriers that are less able to exercise market power have established more competitively appropriate rates. Thus, while

> Bell Atlantic, BellSouth and SBC have proposed . . . rates for typical loop [de–]conditioning activities that range from several hundred dollars to two thousand dollars or more[,] . . . Sprint Local Telephone has . . . no charge for the removal of equipment on loops less than eighteen kilofeet in length, and the charges for loops over eighteen kilofeet range from $5.74 to $6.96.[28]

Such drastic variance in the charges imposed by ILECs for virtually identical de-conditioning activities belies TELRIC pricing.[29]

Moreover, when ILECs levy such excessive charges for de-conditioning activities, the impact on consumers is also severe.[30] Since the ILECs typically refuse to provide DSL service to customers whose loops require de-conditioning, by then pricing de-conditioning to CLECs well in excess of the TELRIC cost, the ILECs can ensure that CLECs are heavily disincented from serving those customers.[31] The result may too often be an unserved consumer. To avoid the devastating impact on competition that such inflated nonrecurring prices imposes, the Commission must reiterate that all nonrecurring charges, including de-conditioning charges be set to reflect the TELRIC cost of provisioning loops in forward-looking, efficient, least-cost telecommunications network.

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[27] @Link Comments at 26-27; Allegiance Comments at 15; CTSI Comments at 19-22; DSLnet Comments at 25-29; Jato Comments at 5-6; CoreComm Comments at 35-38; Network Access Solutions Comments at 9; NewPath Comments at 4; Prism Comments at 12.

[28] Jato Comments at 5-6.

[29] Rhythms Comments at 10-11; *see also supra* n.10; *see also* @Link Comments at 26-27; CTSI Comments at 20-21; DSLnet Comments at 27-28; Jato Comments at 5-6; CoreComm Comments at 36-37; Network Access Solutions Comments at 11-12.

[30] *UNE Remand Order* ¶ 194.

[31] *Id.*

E. Only the Teeth of Performance Penalties Will Assure ILEC Compliance With Loop Provisioning Standards.

The competitor and ILEC comments alike demonstrate that ILECs routinely seek every avenue, including disregard for explicit Commission rules, to avoid their statutory and regulatory obligation to provision unbundled loops. For this reason, CLECs widely support the ALTS' proposal that the Commission institute penalties for failure to comply with national loop provisioning standards.[32] As CoreComm recognizes "[o]nly mandatory penalties paid directly to the CLEC will provide true incentive for ILECs to provision up to their capabilities."[33]

The only rejoinder presented by the ILECs is that some states have already created enforcement mechanisms.[34] Such state-mandated enforcement mechanisms would remain intact, but are clearly inadequate to support a nationally uniform approach to loop provisioning.[35] Indeed, the existence of the ALTS Petition alone demonstrates the inadequacy of those state mechanisms. The Commission, therefore, should establish self-executing enforcement mechanisms to foster timely compliance by the ILECs.

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[32] @Link Comments at 29; Allegiance Comments at 16; Bluestar Comments at 8-9; Comptel Comments at 6-7; DSLnet Comments at 31; Focal Comments at 7-8; Jato Comments at 7; KMC Telecom Comments at 20; CoreComm Comments at 42-43; Network Access Solutions Comments at 14; Prism Comments at 11; RCN Comments at 12.

[33] CoreComm Comments at 43; *see also* Bluestar Comments at 9 ("Without liquidated damages provisions in interconnection agreements pursuant to federally-set requirements, ILECs will continue to face no economic disincentive for failing to perform under their contracts with CLECs."); Allegiance Comments at 16 ("By making violations more salient, this kind of clear regulatory language will not only dissuade incumbent LECs from continually 'testing the envelope' regarding their loop-provisioning duties, but also allow the Commission readily to collect information indicating non-compliance.").

[34] Bell Atlantic Comments at 9.

[35] Bluestar Comments at 8-9; Covad Comments at 7-13; KMC Telecom Comments at 20; CoreComm Comments at 42-43.

II. BIFURCATING INTERPRETATIONS OF OBLIGATIONS IN VARIOUS FORUMS ALLOWS ILECs TO CONTINUE TO RESIST THEIR OBLIGATION TO PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED LOOPS

To avoid Commission action on the ALTS petition—especially on the accelerated basis that a declaratory ruling would provide—ILECs attack the Commission's authority to issue a declaratory ruling. The ILECs proffer various arguments but are unable to agree on what that forum should be; they agree only that the issues surrounding the provisioning of broadband loops should not be resolved in a single proceeding. This self-serving conclusion is unavailing. As numerous commenters noted, only the ILECs benefit from fragmenting decision-making and isolating CLECs in negotiation.[36] Moreover, condoning the ILEC position merely promotes forum shopping and prolongs resolution of these critical issues.

Specifically, the ILECs argue that the Commission should not issue a declaratory ruling where the issues can be made in alternative forums, such as separate federal and state regulatory proceedings and interconnection agreement negotiations with individual CLECs.[37] Yet, most ILEC commenters do not deny that the Commission has the clear authority to "on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."[38] The mere existence of possible alternative forums is not dispositive and does not preclude Commission action on a petition for declaratory ruling.[39] Furthermore, the comments in this

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[36] Allegiance Comments at 12-13; Covad Comments at 5-6; CoreComm Comments at 5; Network Access Solutions Comments at 9; Prism Comments at 2.

[37] SBC Comments at 1-3; Bell Atlantic Comments at 2-3; BellSouth Comments at 2; GTE Comments at 2-4; US West Comments at 2-3.

[38] 47 C.F.R. § 1.2. *See* GTE Comments at 5; SBC Comments at 3; Bell Atlantic at 3. *But see* BellSouth Comments at 1-2 ("[t]he Commission has no legal authority to grant such relief outside of a rulemaking proceeding.").

[39] *New York State Commission on Cable Television v. FCC*, 749 F.2d 804 (C.A.D.C. 1984) *citing NLRB v. Bell Areospace Co.*, 416 U.S. 267, 294 (1974); *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C.Cir.), *cert. denied* 429 U.S. 890 (1976)(decision whether to proceed by rulemaking or declaratory ruling lies within agency's

proceeding make clear that Commission action *would* "terminate controversy" and "remove uncertainty" regarding the various loop provisioning issues addressed in the ALTS Loop Petition. In fact, the mere existence of numerous federal, state and court proceedings addressing the loop provisioning issues virtually guarantees that Commission action meets the standard for a declaratory ruling.

The ILEC positions with respect to subloop obligations demonstrate that there is controversy and uncertainty even within their own ranks. That uncertainty is only compounded when the views of CLECs and various regulators are considered. For example, although SBC assured the Commission that action on its merger condition waiver request on the ownership of the DLC cards and the OCD/ATM Switch would have no effect on ILEC obligations as a whole,[40] Bell Atlantic and US West propose that the proceeding will resolve the issues surrounding the provisioning of subloops through the new DLC environment.[41] BellSouth, however, disagrees, stating that "the Commission's consideration of the specific merger conditions at issue in its review of the SBC-Ameritech merger do not provide a legal basis for issuing national rules affecting non-parties to the merger."[42] Commission action on this Petition will therefore ensure timely, consistent implementation of ILEC subloop unbundling obligations.

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discretion regarding whether the decision may affect agency policy and have general prospective application.). Furthermore, the Commission decision to issue a declaratory ruling is within its discretion following notice and opportunity for comment. *New York State Commission on Cable Television v. FCC*, 669 F.2d 58, 62 n. 9 (2d Cir. 1982); *North Carolina Utilities Commission v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976).

[40] Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (Feb. 15, 2000).

[41] US West Comments at 9 ("Because the Commission has been addressing the issues of subloop unbundling at remote terminals (Next Generation Remote Terminals), this issue should not be addressed in the ALTS Petition."); Bell Atlantic Comments at 19 ("[T]he Commission is already wrestling with the complex issues associated with the Project Pronto proposal and competitive access to remote terminals in other proceedings. (cite omitted) Because both the Commission and the industry are already focused on the remote terminal issue, the Commission need not address it here.").

[42] BellSouth Comments at 11.

Moreover, the ILECs repeatedly, and mistakenly, imply Section 271 requirements and Merger Condition compliance have precedential value on whether their provisioning of unbundled loops is nondiscriminatory.[43] For instance, GTE maintains that the Commission should refrain from establishing subloop unbundling obligations because its unbundling practices will be monitored as a result of the conditions placed upon its merger with Bell Atlantic.[44] Yet these conditions apply only to GTE/Bell Atlantic—a declaratory ruling would apply to all ILECs uniformly. SBC, in turn, claims that subloop unbundling requirements are unnecessary because it agreed to migrate facilities served by IDLC over to available spare copper pairs in order to receive 271 approval in Texas.[45] Yet, SBC fails to point out that this "self-imposed" obligation is only available in the state of Texas and only if SBC determines at its discretion that there is spare copper. SBC and GTE fail to recognize that the obligations arising under their compliance with Merger Conditions and/or Section 271 are not consistently and uniformly applied outside the bounds of those orders. There seems little doubt that other ILECs would dispute application beyond the affected carriers. Moreover, there is significant disagreement as to when and how those requirements impact other statutory and regulatory unbundling obligations under Section 251.

ILEC commenters also generally interpret their unbundling obligations to require loop provisioning in a manner that is merely at parity with the service they provide themselves and their affiliates.[46] As discussed previously, for US West such a standard is meaningless since they

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[43] *See e.g.*, GTE Comments at 11; SBC Comments at 13.

[44] GTE Comments at 11.

[45] SBC Comments at 13.

[46] Bell Atlantic Comments at 10 (regarding loop provisioning intervals); GTE Comments at 13, 15 (regarding loop information and provisioning intervals); SBC Comments at 12, 20 (regarding unbundled subloops and loop provisioning intervals).

recognize no obligation of parity with respect to their retail provisioning.[47] SBC concludes that it will only unbundle subloops to CLECs "on the same terms and conditions as SBC's separate advanced services affiliate."[48] Thus, if SBC's separate advanced services affiliate does not need or want a particular subloop element, no other CLEC can have it. The unbundling obligations under Section 251, however, require much more. ILECs must provide CLECs access to unbundled subloops on a just, reasonable and nondiscriminatory terms and conditions.[49] This obligation requires more than mere parity with the services provided to an ILEC affiliate; nondiscriminatory conduct *can* be unjust or unreasonable.

Thus, the Commission has found that "just" and "reasonable" mean "more than the obligation to treat carriers equally . . . these terms require incumbent LECs to provide UNEs under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete."[50] SBC's proposals fail to comport with this long-standing principle. As a result, this ILEC stance deprives consumers of the level of innovation and variety of broadband services contemplated by the Act in bringing competition to the marketplace.

The Commission should therefore reiterate that ILECs must unbundle their loop network at any technically feasible point in a just, reasonable and nondiscriminatory manner, including making any subsequent changes to that network infrastructure consistent with and in contemplation of their obligation to unbundle the loop network for broadband competitors.[51]

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47 *See supra* at I.A.

48 SBC Comments at 12.

49 47 U.S.C. § 251(c)(3).

50 *Local Competition Order* ¶ 315.

51 Rhythms Comments at 15-17. Allegiance Comments at 8-10; KMC Telecom Comments at 11-12; CoreComm Comments at 41.

CONCLUSION

For all of the reasons set forth herein and in Rhythms opening comments, Rhythms respectfully requests that the Commission promptly render a declaratory ruling regarding the nondiscriminatory provisioning of loops in accordance with the specific mechanisms set forth in the ALTS Petition.

Respectfully yours,

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